

ZONING BOARD OF ADJUSTMENT

Minutes of February 15, 2011

ATTENDEES: Doug Kirkwood - Chairman, Wil Sullivan, Alternate, Carl Miller, Jamie Ramsay, Jim Quinn, Alternate, Joe Taggart, Alternate, Alex Buchanan, Alternate, and Charlie Tiedemann – Planning Director

The meeting was called to order at 7:10 p.m. Doug Kirkwood indicated that the January meeting was cancelled due to weather and those items have been moved to tonight's agenda. Doug Kirkwood introduced the members of the ZBA and described the process. Questions and comments are received from the public, after which the ZBA enters deliberations at which point no additional public input will be received. At the end of deliberations a vote will be taken to grant, grant with conditions, table or deny the request. A request for a re-hearing may be filed within 30 days of the decision by the applicant or an abutter. A question regarding who will be voting tonight came from the public in attendance. Doug Kirkwood indicated he will introduce members when he is finished.

Doug Kirkwood asked that Joe Taggart vote in the absence of Robert Rowe and Wil Sullivan vote in the absence of Dan Weldon.

Case 1421: Lot 8-55 NH Route 101: *Variance* – Kayleen M. Stowell, Trustee, Kayleen M. Stowell Revocable Trust, 395 Mammoth Road, Londonderry, NH 03053 (owner), and R. John Roy, 573 Maple Street, Manchester, NH 03104 (agent), requests a Variance from the provisions of the Amherst Zoning Ordinance Art. IV, Sec. 4.4 Northern Transitional Zone, Subsec. 4.4.2 Permitted Uses. In order to sell lawn mowers / tractors and transporting trailers by exhibiting 2 or less in front of the garage (as shown on the submitted plans) of the dwelling located on the premises (not a permitted use). Northern Transitional Zone

This case was first on the January 18, 2011, meeting.

Attorney John Roy, representing the applicants, indicated that he brought a large copy of the plan for easier reading, to which Doug Kirkwood responded that the ZBA members have copies of the plans. He also explained that Mr. and Mrs. Paquette sent him a letter that he was unable to provide to the Board prior to this meeting; Mr. Roy then presented a copy to Doug Kirkwood. John Roy explained that the Stowell's worked for St. Johnsbury Trucking for many years and have since been working buying and selling lawnmowers and tractors from his property in Londonderry and would like to now display tractors or mowers at his Amherst property, which was formerly part of the Bragdon property. This is a section which used to abut the old location of NH Route 101 and because of highway relocation, this parcel is pushed off to the side but is visible from it's present location. This does not interfere with the area which is transitional and is rural and is still useful for farming purposes. A road sign photo was submitted to Doug

46 Kirkwood for the file. The intended purpose is to have a small paved portion in front of
47 the structure.

48
49 The criteria were reviewed: this is in the public interest since it will make quality used
50 lawn equipment available for purchase. It is consistent with the spirit of the ordinance
51 since the use is not dissimilar to other uses in the area and is harmonious with other uses
52 in the area. Substantial justice will result, there is no offensive use and it is consistent
53 with the location being a general rural area zoned transitional entry to the town of
54 Amherst. Surrounding property values would not diminish or decrease, the impact would
55 be less than a farmstand and would not harm the surrounding property values. The access
56 or use of this property is diminished because of the configuration of Route 101 but this
57 use would alleviate that. The present configuration of the property prevents any use the
58 way it was previously developed. The applicant is seeking some use of the property
59 without causing any affect to the other properties.

60
61 Alex Buchanan asked if the building is a residence? John Roy said it is a commercial
62 unused building that is separate from the house. Alex Buchanan said this is the building
63 with the three garage doors? John Roy explained the building will not be used, only the
64 residence, the building will not be used to refurbish the equipment. Charlie Tiedemann
65 indicated an existing nonconforming use was on this property and they've been gone for
66 about 10 years. Carl Miller asked if the garage will be used? Mr. Stowell has some
67 people living upstairs in the residence but the garage building will not be used, there will
68 be a phone number to contact him in Londonderry. John Roy said the paved portion of
69 the asphalt is what he wants to use to display two vehicles at any one time for advertising.
70 His facility is located in Londonderry where he does his work. Joe Taggart said there
71 have been tractors located on the paved portion of this property for sale. Mr. Stowell did
72 not understand a rule against that existed. Joe Taggart asked if what has been done over
73 the last couple of years is consistent with what he wants to continue to do. Mr. Stowell
74 said that is correct, and with a phone number.

75
76 Charlie Tiedemann said it is not a transitional zone from residential to commercial. This
77 lot is in the transitional zone so it is going from the Residential Rural Zone to the
78 Northern Rural Zone. Charlie Tiedemann asked about enforcement, the application says
79 two tractors, what if there are three out there? Mr. Stowell said that this is a commercial
80 use (selling tractors), a Variance would be needed to create a commercial use within the
81 existing building. Charlie Tiedemann asked what enforcement can be used. Charlie
82 Tiedemann commented about the owners other operation where the applicant has with
83 thousands of lawnmowers in the yard, he does not want it to turn out like that other
84 property. John Roy said his business at his home is another situation. Charlie
85 Tiedemann said this has been an ongoing violation issue with Mr. Stowell and Mr. Roy
86 about the tractors being out there without it being allowed. Mr. Roy said this is not a
87 regular wholesale use, there will be two pieces of equipment with a name and phone
88 number, that is it. Wil Sullivan stated the use is similar to other uses in the area which is
89 stated in the application, but what other uses? Mr. Roy said tractors are used for
90 agriculture use. Wil Sullivan said using tractors for agriculture use is different from
91 selling tractor equipment. Jamie Ramsay said the equipment definition, is it

lawnmowers, tractors, or will a timber skidder show up? Mr. Roy said it could be anything to do with tractors, not a tractor trailer or bulldozer. Doug Kirkwood noted in the application it says lawnmowers and tractors. Mr. Stowell said it could be small tractors or lawnmowers, not construction equipment. Jamie Ramsay said it is difficult to define the size of a tractor but it could also be a tractor that drags equipment. Mr. Roy indicated that the applicant does have those at his home location. Mr. Stowell said it will not be heavy equipment. So if this were limited to garden mowers or lawn tractors, Doug Kirkwood asked if that would work? Joe Taggart suggested using “rubber tires” in the definition; if it states “rubber tired only” it will be smaller equipment.

Doug Kirkwood asked if there were questions or comments from the public and if so, you must state your name. There were no further questions.

Case 1458: Lot 8-57 NH Route 101: *Variances* - Richard N. Bragdon, Trustee, c/o Betsy Noble, 43 High St., Richmond, ME 04357 (owners), and Labelle Winery, LLC, 100 Chestnut Hill Rd., Amherst, NH 03031 (applicant), requests two (2) Variances from the provisions of the Amherst Zoning Ordinance Art. IV, Sec. 4.3 Residential / Rural Zone, Subsec. 4.3.1 Permitted Uses; and Subsec. 4.3.3 Yard Requirements, Para. 4.3.3.5. In order that they may operate a winery with associated uses including grape and berry vineyard, vegetable and herb garden, retail sale of products associated therewith, manufacturing and processing thereof, wine and product tasting with accompanying food and catering function room (not all permitted uses); and to construct a structure that will be 46+/- feet high (only 35 feet allowed). Residential / Rural Zone (Aquifer Conservation District overlay)

This case was second on the agenda of the January 18, 2011, meeting.

Attorney Morgan Hollis, representing the applicants, explained this is a complex application proposing to use the property for a winery. This property is part of the Bragdon Farm on the opposite side of the road on the backside of the sledding hill and is fairly large with 11.2 acres. This is part of a larger tract. Bragdon Farm is no longer a viable use, it is getting parceled out and this is one of the few remaining pieces. The client proposes to buy and operate a vineyard and winery. This is a unique use and is not permitted in the zone. The second Variance deals with the topography of the property which ends up with the building being higher than what is allowed. Two Variances are being requested. Mr. Hollis introduced the two applicants Cesar Arboleda and Amy LaBelle to speak about the proposed use of the property. They would like to continue their business in Amherst. The plan is to build a winery facility and plant grapes, berries, and vegetables that have to do with wine, a tasting room is proposed which requires a retail Variance and it will include the ability to host small functions. Wil Sullivan asked if most grapes will be imported? Amy said that is correct since the New England wineries have such a cold climate. They are working with developing cold climate grapes. Grapes from the finger lakes in NY are used in their wine, bringing in as much local produce as possible. Some grapes will be produced on site. Doug Kirkwood asked if this will be similar to Stonewall Kitchen that combines the wine product with an agrarian lifestyle. Jamie Ramsay asked about the function room, is that something that

would be available to the public? Amy answered it will be an ancillary use for the winery and the winery will remain the main focus. Alex Buchanan asked where they are functioning now? Amy responded they are on Chestnut Hill Rd in Amherst and they are just a winery. Joe Taggart asked how much wine they produce. Amy answered about 12,000 gallons per year right now. Joe Taggart asked what the zoning is at the address? Amy didn't know, but they have approval.

Morgan Hollis explained the layout of the parcel and where the building will be oriented. The structure will not be seen when traveling on Route 101 toward Amherst. 10,000 sqft is the total area of the building. It is not designed to be an event center, it is designed to be a winery. This is an agricultural use plus processing of the wine, selling of the wine and tasting of the wine. Morgan Hollis provided snapshots of the area where the growing and tasting will occur.

Morgan Hollis reviewed the tests: Not contrary to public interest; the ordinance segregates land according to use; this zone does not have a stated purpose however across the street is the Northern Transitional Zone which applies to this area as well. Uses permitted in this zone include farms, farmstands, etc. this is a scenic setback road. Does this proposed use affect the character of the zone? Vineyards is a permitted use, retails products are questionable. The 10,000 sqft building structure will be a single structure and looks somewhat agricultural. It is set back from the roadway and will not be seen when entering the town. This preserves the scenic and natural character and does not conflict with the Ordinances in town. Is the Variance consistent with the Ordinance. The spirit & intent of the ordinance are being maintained with the Variance. Substantial justice will be done, property is currently used for farming, other uses could be for development, the proposed use will create one driveway and will not detract from the property and allow the owner a reasonable return on the investment and allow the town to maintain its character. It is difficult to locate this type of use in other areas of town.

Will the value of surrounding properties be diminished? The sledding hill which will remain open space, Camp Young Judea, and across the way there is more farm property and a K-9 facility across the street. Morgan Hollis has engaged an appraiser to view the property and indicate if the proposed use would adversely affect the surrounding properties, which provided the results depicting that the proposed use would not adversely affect surrounding property values.

Unnecessary hardship – unique setting, surroundings are rural farmland with some uses set back from Route 101. The road has very little development. The lot has a small shape with a small unusual shape. There is a limited area where the property can be accessed. It also has unique topography. Access is off the highway. The lot is unique. The lot is not deep enough to connect with anything behind it. This is not a reasonable lot for residential development. This variance will allow a use that maintains the objective – rural and natural character. This proposed use is reasonable. It will be a fantastic addition to Amherst. Representatives from the surveying company are here tonight.

184 Jamie Ramsay asked about the 46 foot high building. Morgan Hollis explained the height
185 restriction is generally for the Fire Department, the Fire Chief met with the architect and
186 there were concerns about access, they looked at the building layout; turning movements
187 of the equipment will need to be worked out during the Planning Board phase of the
188 project; the 46-foot height is due to the change in topography. Jamie Ramsey said that
189 height would be visible from Route 101. Rolf Biggers, the architect, said it is a clear
190 story at the top that contributes natural light with a cupola, in the back where topography
191 drops off, the building shows at 46 feet. Coming from Bedford heading to Amherst, the
192 building is difficult to view. Jamie Ramsay asked if the clear story is at 35 feet? Rolf
193 said the clear story does not count for the height. Jamie Ramsay asked if the clear story
194 was 17 feet high? Rolf said it still would not count. Charlie Tiedemann said the cupola
195 can go above the height restriction. Rolf stated that as long as it is unoccupied it does not
196 count. Jamie Ramsay can envision this on the hill, the building is substantial. Rolf
197 indicated the architecture of the building makes it appear smaller because of the sloping
198 roofs that break up the massing and design. The intent is to break up the massing and
199 scale similar to a rambling farmhouse. Jamie Ramsay asked if it is possible to stay within
200 the 35 foot height? Rolf answered yes, but not at the back of the building. Jamie Ramsay
201 asked if the vertical walls of the building can be shorter? Amy said they cannot because
202 of the size of the tanks.

203
204 Doug Kirkwood indicated the contour lines indicate that the top of the lot is at 285', does
205 it get higher? Morgan Hollis introduced Ray Shea from Sanford engineering who said
206 that it does go higher, in that one corner. Rolf said the ridgeline that divides the sledding
207 hill from this property has a tree line.

208
209 Morgan Hollis reviewed the tests. The spirit & intent of the ordinance mostly has to do
210 with fire safety, the accessibility to the front of the building is acceptable. There is no
211 harm to the public by granting the Variance. Surrounding property values will not be
212 affected. A 35 foot tall building will be built except for one side which requires
213 additional height due to topography.

214
215 Morgan Hollis covered both Variances and asked if there were any further questions.
216 Jamie Ramsay said there will need to be some traffic control on Route 101, the Variance
217 would change the rural character of the area, should that be considered? Morgan Hollis
218 said a preliminary traffic study was done with a right of way, looking at the K-9 country
219 there was a center turning lane approved, there is adequate sight distance on Route 101
220 that will be addressed at the Planning Board stage. Doug Kirkwood asked what kind of
221 traffic volume for deliveries would be expected? Amy said there are bottles and grapes
222 delivered occasionally but not a lot of deliveries. Jim Quinn asked about the cupola
223 regulation. Charlie Tiedemann said cupolas are an exception and he would consider the
224 clear story area the same as a cupola. Rolf said the cupola is five feet and the clear story
225 area is another five feet that is on the elevations. Morgan Hollis said those two items are
226 allowed. Jim Quinn said a Variance is still being asked for. Rolf added that by having
227 both items, they add to the quaintness. Alex Buchanan asked if the peak of the roof is
228 still above 35 foot maximum even without the cupola and clear area? Rolf answered yes,
229 this works the best with the topography, and it will look like it belongs. Amy added that

230 having natural light from the clear area helps in the interior. Joe Taggart asked what
231 Charlie Tiedemann thinks they really need? Charlie Tiedemann indicated all the things
232 in the Variance are not permitted. So if they applied for a farm, asked Jamie Ramsay?
233 Charlie Tiedemann responded it depends on the scale, this is not an insignificant
234 proposal. Morgan Hollis indicated that everything that the applicants would like to have
235 has been laid out. There were no further questions from the Board.

236
237 Doug Kirkwood asked for questions from the public or abutters.

238
239 Marilyn Peterman, 130 Amherst Street, is a member of the Planning Board, and
240 explained a Master Plan process was just finished, during the process the one
241 characteristic that stands out in the Master Plan is to try to keep the rural character in
242 Amherst alive. The Town purchased a portion of Bragdon Farm, public interest was
243 served in terms of rural character. Secondly, economic development was discussed
244 during that process, over the years we have tried to create areas of commercial activity
245 away from Route 101A and have not been successful. Marilyn Peterman feels this fits
246 the total package of what is desired. Ancillary farming uses was discussed at the last
247 Planning Board meeting and that will be revisited at some point. Marilyn Peterman
248 believes this will be in the public interest because of the people that will be attracted to
249 Amherst.

250
251 Sandy Rogers, 1 Gowing Lane, thinks the plan is beautiful and is a great idea and the
252 wine is good. Frank Stama, Pulpit Run, would like to encourage the board to maintain
253 the characteristic of the Town, this is unique to NH and we could brag about it. He was
254 part of the Master Plan and people want things to look like this plan. Tom Grella,
255 Manchester Road, was thinking about exiting from the driveway with the line of sight, he
256 wonders about the safety problem with people at the sampling table. Charlie Tiedemann
257 said that will have to be looked at and meet the State and Town requirements. Doug
258 Kirkwood said that would come up at Planning Board. Graham Knight, Upham Road,
259 asked if the business does not succeed, what happens to the building to ensure it does not
260 turn into a big box store or a gym? Doug Kirkwood said he cannot respond to that but it
261 would require a completely new proposal and the public would be able to have their say.

262
263 Bill Veillette, Pierce Lane, asked that people be mindful about the zoning ordinances for
264 residential areas, there is Route 101A which is commercial and other people do not want
265 Route 101 to become developed commercial. If that happened, Amherst would be
266 landlocked by traffic lights. This is a commercial operation but we should be careful
267 about how Route 101 gets developed and about traffic and turning lanes. Doug
268 Kirkwood indicated that the ZBA is being asked to address very specific issues, some of
269 the issues being brought up are specifically Planning Board issues. The planning issues
270 are not the ZBA purview. Bill Veillette responded that the attorney brought up if this
271 would be harmful to the residents of this zone.

272
273 Mona Kolocotronis 12 Mont Vernon Road, has known the applicants for many years, and
274 has watched them develop the winery and how they always keep community involvement
275 in mind, she feels the growth (and move) to Bragdon will allow them to grow the

business and bring in jobs and expand the support from community businesses. Ann Krantz, resident, indicated Bragdon Farm has good soils for a farm and feels it is a good location. Ken Dionne, 106 Chestnut Hill Road, moved to Amherst five years ago from Bedford. This proposal seems to maintain the integrity of Amherst and he is in favor. Will Ludt, 103 School Street, indicated the Heritage Commission recently did a survey to identify historic sites in Town which this location does come under and to maintain the rural character of town. He is concerned about the vista; the building is significant and make sure that the building is built to maintain the character of Amherst. The Heritage Commission should take two weeks to review the plan and offer an opinion on the aesthetic qualities. Doug Kirkwood said that request would be more appropriate for the Planning Board if they get the Variances. Nancy Kierstead, Richard Bragdon Trust, she is thrilled at this idea of an agricultural business on this property, she would encourage the Variances to be granted.

Jim Quinn asked the elevation of the sledding hill in relationship to the highest point of the building. Morgan Hollis said the height of the land continues up beyond the height on the plan to about 295'. Rolf said to add 45' of the base elevation of where the building sits. Morgan Hollis summarized 275-280 plus the 45 feet. Ray Shea said the road flattens out with the topography. Rolf compared the height to the barn that is on Route 101. From Bedford this structure will not be very visible, going from Amherst to Bedford it will be visible. We want it to be visible when going from Amherst to Bedford. Doug Kirkwood asked if this design was made to be compatible to the parcel. Rolf said that is exactly what they did. Jamie Ramsay does not see the building as a farmhouse or New England style. Rolf said it is designed to have the rhythm, scale and style of a winery. The scale of the building is very New England. This is a unique building that has its own character and does not replicate.

Morgan Hollis commented that the spirit of the ordinance refers to the word rural. This is not the most rural zone, it is a 2 acre residential zone. This proposal on this lot is in keeping with the spirit and intent of the ordinance. Joe Taggart said that 12,000 gallons are now being produced, what percentage of sales are in other retail outfits. Amy responded that 10% is from the current location, 90% is from other store fronts. Joe Taggart said with the increase to 30,000 gallons, how much would that increase the sales on site? Amy did not know if she could answer that.

There were no further questions or comments.

Case 1459: Lot 4-147-16 Victoria Ridge and Spring Road: *Variance* – Bradford A. Knight, 21 Upham Road, Amherst, NH 03031 (owner), requests a Variance from the provisions of the Amherst Zoning Ordinance Art. IV, Sec. 4.3 Residential / Rural Zone, Subsec. 4.3.3 Yard Requirements, Para. 4.3.3.5. In order to construct a dwelling that will be 48 +/- feet high (only 35 feet allowed). Residential / Rural Zone

This item was third on the agenda of the January 18, 2011, meeting.

Wil Sullivan stepped down from the Board for this discussion.

Brad Knight, applicant, requests a height Variance.

- 1 - Public interest, yes, he feels this will protect the rural characteristics of the town.
- 2 - Proposed residence is in keeping with character of neighborhood
- 3 - No harm to the general public
- 4 - Value of surrounding properties will not be diminished
- 5 - Hardship which will disallow the walkout basement.

This is 35 feet from all sides. The issue is that they would like a walk out basement in order to utilize the space as the basement is 9.6' tall, so it would be 44 feet from back of the house. This surprised Brad since there are a lot of walkout basements and if there is any reasonable roof pitch it quickly approaches 35 feet. This would not be a fire issue, there is ample egress on three sides. It is a regular house and the owner is requesting a walk out basement and that is the only request.

Doug Kirkwood asked about contours. Brad said it is a flat lot with about 4 feet of change over the whole lot. The topography does not show on the plan. Jamie Ramsay asked if the walkout was created by filling in the sides. Brad said that is kind of what he did and they wanted a taller basement. This would not be visible from the street. Jim Quinn asked if this is a new Ordinance. Charlie Tiedemann explained it has had some changes but has been there a while. The previous building inspector did not look at the height. Jamie Ramsay asked if Brad was aware of the height restriction when he applied for the building permit. Brad feels the Ordinance language is very vague. Charlie Tiedemann thinks the language is clear and told Brad that you needed to get a Variance or an Administrative Appeal and you chose to apply for a Variance. Jamie Ramsay asked if there is a view from any adjacent property? Brad said not from any public view. The fire issue was part of the height issue.

There were no further questions from the Board. Carl Johnson, purchaser of the home, 11 Rhodora Drive, stressed that if this had been seen as an issue, it would have been raised at the beginning. It was never questioned that it would not be a viable option, and he is just trying to maximize the land. It was felt that this option would leave the character of the lot as it was. To his knowledge there were no Variances granted to the other structures in the neighborhood which are similar.

Doug Kirkwood asked for questions or comments from the public.

There were no further comments or questions.

Case 1460: Lot 6-109 North Meadow Road and NH Route 101: *Administrative Appeal* – Benjamin D. and Sharron L. April, 22 North Meadow Road, Amherst, NH 03031 (owners), and New Cingular Wireless PCS, LLC (“AT&T”), c/o Stephen D. Anderson, Anderson & Kreiger LLP, One Canal Park, Suite 200, Cambridge, MA 02141 (applicant). The applicant hereby requests consideration be given to a decision involving construction, interpretation or application of the terms of the Ordinance made by the

Amherst Planning Board on December 15, 2010. The Ordinance that is the subject of this appeal: Art. III, Section 3.16 Personal Wireless Service Facilities. In order that they may vacate the Planning Board's denial of the Non-Residential Site Plan of a proposed cell tower. Residential / Rural Zone.

Case 1461: Lot 6-109 North Meadow Road and NH Route 101: *Variance* – Benjamin D. and Sharron L. April, 22 North Meadow Road, Amherst, NH 03031 (owners), and New Cingular Wireless PCS, LLC ("AT&T"), c/o Stephen D. Anderson, Anderson & Kreiger LLP, One Canal Park, Suite 200, Cambridge, MA 02141 (applicant), requests a Variance from the provisions of the Amherst Zoning Ordinance Art. IV, Sec. 4.3 Residential / Rural Zone, Subsec. 4.3.2 Area and Frontage Requirements, Para. 4.3.2.2. In order that they may obtain a modification of a prior Variance (Case 722) and / or obtain a new frontage Variance to construct a cell tower on lot 6-109. Residential / Rural Zone

Attorney Stephen Anderson, from Anderson & Kreiger and representing the applicants, presented the plan for this proposed cell tower. The tower location is a 103' monopine that meets the setbacks. The access driveway is on the down slope side of the hill to the equipment compound. A tree survey plan was proposed to calculate the average tree height in this area. 62.8' is the average tree height in this area. 301 trees are at this site, several of those trees exceed 70-100 feet. The average tree canopy height is calculated using all of the trees that will remain after the facility is built. A normal electricity connection is required for operation of the cell tower. In 1984 a Variance was granted for less than required frontage. The Administrative Appeal is on the grounds of working for a year with Planning and Fire to make sure the plans conform in all respects to the Ordinance.

(The speaker is losing his voice and is extremely difficult to understand therefore the minutes for this case may not be as complete as they normally would be. Another speaker should have been utilized. DB)

The frontage issue, Town Counsel stated it is a nonconforming use and requires a use Variance. A new hearing was applied for but the applicant also filed an Administrative Appeal. The Planning Board they dismissed the application without prejudice. This is the same application as was presented previously; it is an unmanned facility of which there are thousands around the country. The frontage Variance was created in 1984. When conceptualizing the Variance that was granted, it is for the same driveway. There is no change to the means of access. They want the Planning Board to go back where it was left off to continue through the process.

The Town Counsel letter also brought up the RSA that when there is a public request, the public body must respond, they feel that the Planning Board should have gone about their business and not dismissed it because a Variance was required from the ZBA. The application was first submitted about a year and half ago, the site plan was deemed to be a complete application in November 2010. With the Planning Board presentation in

November the clock started ticking. The site plan proceedings should have continued and not been hung up with the ZBA process.

The Variance criteria follow:

Public interest – accommodates wireless communication addressing the gap in coverage; 100,000,000 customers currently with AT&T

Substantial justice-cannot be achieved through other means

Property values not diminished – re: appraisal company

The relief being requested from Planning Board is the average tree canopy height; in order for the RF signal to work it has to be above the tree line.

Satisfied all requirements in the Ordinance; the use is allowed in the district, co-location is requested, this will improve telecommunication services. The only traffic is when a person goes to perform maintenance. It is a very light use of an existing driveway. Property values will not be diminished as explained by a Supreme Court case. There is no reasonable alternative.

Drew LeMay, appraiser Concord, RE Consultants of NE; appraiser for 35 years, worked for DOT as a staff appraiser; report summarizes if the cell tower would diminish property values. Buyers determine if there is an influence on the value of properties based on the location of a cell tower. His study shows that cell tower locations do not diminish property values. A national survey was conducted and found that residential property values are not diminished by the location of a cell tower. Most buyers are not influenced by the location of cell towers. It does not translate into negative impact on buyers.

There were no questions for Mr. LeMay. Keith Vellante presented some of the special conditions of the property and how it fits into the need for coverage in this area. The coverage gaps along route 101 are the areas they are focusing on with this application. With the proposed site the gaps are closed along Route 122, the village center, and Route 101. The ridge being proposed will locate the tower in an ideal location to cover the gap. Alternatives were looked at but would not cover the gaps. There were no further questions.

Alex Buchanan asked why we are here with this? The Planning Board sent you away and you disagree that a Variance is needed? Mr. Anderson responded yes. Alex Buchanan said if we rule on the Administrative Appeal do we need to rule on the Variance? Mr. Anderson said no. Carl Miller asked if the frontage is the issue, the Variance existing now was the only available option. Mr. Anderson said the 1984 Variance is in the application. Alex Buchanan indicated it is the frontage on a publicly maintained road. Charlie Tiedemann said today, he would say it is a conforming lot but you cannot get there from a publicly maintained road without a private access easement. Carl Miller said they have the frontage they need so the issue is they need access which is a private easement and we cannot act on it.

459 Attorney Rattigan, counsel for Planning Board, stepped in for Bill Drescher tonight, the
460 decision was right because the 1984 decision granted the Variance for frontage, at the
461 time there was no consideration by the ZBA for frontage Variance for cell tower use.
462 The Board felt that in 1984 the board did not consider this type of use. The Planning
463 Board has no position on the Variance which is not their purview and has made no
464 decision on the issue raised this evening on whether the frontage issue is for access. He
465 encouraged the Zoning Board to deny the Administrative Appeal and take up the
466 Variance.

467
468 Alex Buchanan indicated even if the Variance was required, the Planning Board still had
469 the obligation to act on the application. Attorney Rattigan indicated the legislature
470 modified the law that you cannot deny acceptance of an application for certain permits.
471 The statute was intended for that purpose and not for Variances to be obtained before
472 Planning Board applications are accepted. If relief is granted from the ZBA, then the
473 applicant goes to the Planning Board. Carl Miller asked if the Variance is granted, they
474 still do not have access. Attorney Rattigan responded if the Variance is granted, it
475 satisfies the ordinance, the access is a private matter at that point. Carl Miller asked what
476 if access from a publicly maintained road is there, do they need a Variance? Attorney
477 Rattigan said the Planning Board did not look at that aspect and it was not reviewed. The
478 Planning Board has the authority to refer to the ZBA.

479
480 Doug Kirkwood asked if there were any further questions or comments. Jane Cosmo,
481 North Meadow Road, has raised objections because the cell tower would be visible when
482 driving down the road, the bypass creates noise and she feels it affects property values.
483 Lisa Jones, 35 Thornton's Ferry Road I, said this tower would be right in the backyard of
484 her home, when the presenter said a letter was received from an abutter expressing
485 concern about the access road, it was a letter from the original owner that was granted the
486 Variance and expressed the concern about that road being used for commercial use. The
487 original owner should be contacted. There are many studies that have been done about
488 the health issues and radio waves. Doug Kirkwood said there is no town in the country
489 that can prevent the location of a wireless facility within the town, but they must comply
490 with the local ordinances.

491
492 This presentation concluded at 10:50 pm.

493
494 Wil Sullivan stepped back up to the Board.

495
496 Doug Kirkwood asked at what point the Board will have enough tonight? Carl Miller
497 suggested trying to take some votes on some of the matters. Doug Kirkwood thought it
498 would go until about midnight tonight and if not finished, this would need to be
499 concluded next week.

500
501 **DELIBERATIONS:**

502
503 There was a short break prior to deliberations beginning.
504

Jamie Ramsey moved to enter deliberations. Carl Miller seconded. All were in favor.

Case 1421:

Carl Miller moved no regional impact. Jamie Ramsay seconded. All were in favor.

II. Conclusions [RSA 674:33, I (b)]:

1. The Variance will not be contrary to the public interest.

Carl Miller yes - it is existing and he does not see a serious public problem

Joe Taggart yes – he always assumed it was ok Jamie Ramsay yes – Wil Sullivan – yes

Doug Kirkwood - yes

True: 5 Not True: 0

2. The Variance is consistent with the spirit and intent of the Ordinance.

Wil Sullivan yes – it seems agricultural with minimal use for two tractors

Jamie Ramsay yes – if use can be limited to tractors and does not cause an enforcement issue, then it becomes a change of use issue Carl Miller yes

Doug Kirkwood yes

True: 5 Not True: 0

3. Substantial justice is done.

Joe Taggart yes – reasonable use for the location

Carl Miller yes – Wil Sullivan yes – Jamie Ramsay yes – Doug Kirkwood yes

True: 5 Not True: 0

4. The values of surrounding properties will not be diminished.

Carl Miller yes Joe Taggart yes Jamie Ramsay yes Wil Sullivan yes – it’s a pretty isolated location Doug Kirkwood yes

True: 5, Not True: 0

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

(Apply tests under A or B below)

A. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

(1) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and

(2) The proposed use is a reasonable one.

Wil Sullivan yes, location and history is a commercial nature; Jamie Ramsay yes; Joe

Taggart yes, the site cannot be developed and it has an agricultural history; Carl Miller

yes, Doug Kirkwood yes

True: 5, Not True: 0

B. If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

True: ____, Not True: ____

Carl Miller suggested having “lawnmowers and compact lawn tractors” only to this granting.

The application passed all the meets, therefore the Chair indicated the Variance is granted and is limited to lawnmowers and compact lawn tractors only.

Case 1458:

Carl Miller moved no regional impact. Jamie Ramsay seconded. All were in favor.

Height variance

II. Conclusions [RSA 674:33, I (b)]:

Carl Miller feels it is consistent with maintaining the view of the town and keeping additional housing off the property, it makes a lot of sense. Wil Sullivan feels it is a good idea; Carl Miller feels the architect did a good job with the building; Wil Sullivan indicated the alternative is housing; Joe Taggart does not like houses on two acre lots and he does not feel that preserves the character of the town but this creates more traffic, those are the facts that he weighed – he does not care for the design since he feels it looks European or Californian and that’s not where we are; Jamie Ramsay said this is not in the Historic District so that cannot be considered;

1. The Variance will not be contrary to the public interest.

Wil Sullivan yes, Carl Miller yes, Joe Taggart yes, Jamie Ramsay yes, Doug Kirkwood yes

True: 5, Not True: 0

2. The Variance is consistent with the spirit and intent of the Ordinance.

Carl Miller yes, Joe Taggart yes it is a conforming structure, Jamie Ramsay yes, Wil Sullivan yes, Doug Kirkwood yes

True: 5, Not True: 3

3. Substantial justice is done.

Jamie Ramsay yes for the applicant and the town since it preserves the rural character, Doug Kirkwood feels this is a reasonable choice, Carl Miller yes this maintains open space, Wil Sullivan yes, Joe Taggart yes

True: 5, Not True: 0

597
598 4. The values of surrounding properties will not be diminished.

599 Carl Miller yes, Jamie Ramsey yes, Joe Taggart yes, Wil Sullivan yes, Doug Kirkwood
600 yes

601 True: 5, Not True: 0

602
603 5. Literal enforcement of the provisions of the Ordinance would result in an
604 unnecessary hardship.

605 (Apply tests under A or B below)

606
607 A. For purposes of this subparagraph, “unnecessary hardship” means that, owing
608 to special conditions of the property that distinguish it from other properties in the area:

609
610 (1) No fair and substantial relationship exists between the general public
611 purposes of the Ordinance provision and the specific application of that provision to the
612 property; and

613
614 (2) The proposed use is a reasonable one.
615 Jamie Ramsay yes, Wil Sullivan yes there is wetland, Carl Miller yes it is an odd shaped
616 parcel with wetland so it is reasonable, Joe Taggart yes it is agriculturally landlocked,
617 Doug Kirkwood yes

618 True: 5, Not True: 0

619
620 B. If the criteria in subparagraph A are not established, an unnecessary hardship
621 will be deemed to exist if, and only if, owing to special conditions of the property that
622 distinguish it from other properties in the area, the property cannot be reasonably used in
623 strict conformance with the Ordinance, and a Variance is therefore necessary to enable a
624 reasonable use of it.

625 True: ____, Not True: ____

626
627 The application has passed all the tests, therefore the Board grants the Variance.

628
629 **Use Variance**

630
631 II. Conclusions [RSA 674:33, I (b)]:

632 1. The Variance will not be contrary to the public interest.

633 Wil Sullivan yes, Carl Miller yes, Joe Taggart yes, Jamie Ramsay yes, Doug Kirkwood
634 yes

635 True: 5, Not True: 0

636
637 2. The Variance is consistent with the spirit and intent of the Ordinance.

638 Carl Miller yes, Joe Taggart yes, Jamie Ramsay yes, Wil Sullivan yes, Doug Kirkwood
639 yes

640 True: 5, Not True: 0

641
642 3. Substantial justice is done.

Joe Taggart yes, this is where agriculture is going around the country and this gives them economic leverage; Jamie Ramsay yes, Carl Miller yes, Wil Sullivan yes, Doug Kirkwood yes

True: 5, Not True: 0

4. The values of surrounding properties will not be diminished.

Carl Miller yes, Jamie Ramsay yes and keeping an agricultural flavor to an agricultural area, Joe Taggart yes, Wil Sullivan yes, Doug Kirkwood yes

True: 5, Not True: 0

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

(Apply tests under A or B below)

A. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

(1) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and

(2) The proposed use is a reasonable one.

Carl Miller yes the property is an odd shape and is unique, Joe Taggart yes, Jamie Ramsay yes, Wil Sullivan yes, Doug Kirkwood yes

True: 5, Not True: 0

B. If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

True: ____, Not True: ____

The application has passed all the tests, therefore the Board grants the use Variance.

Alex Buchanan suggested that the Variance is granted to those uses as outlined and so that the retail does not get separated somehow into a retail operation. He wants to ensure that down the line it is recorded that this is approved as a package, if the winery is shut down, it cannot be changed into a fast food place. *The associated uses as articulated in the variance requests are committed only as part of the operation of the winery. All concurred.*

Wil Sullivan stepped down from the rest of deliberations.

Case 1459:

689 *Jamie Ramsay moved no regional impact. Carl Miller seconded. All were in favor.*

690
691 Doug Kirkwood asked that Alex Buchanan vote in the absence of Dan Weldon.

692
693 II. Conclusions [RSA 674:33, I (b)]:

694
695 Carl Miller feels this is just a walk out basement.

696 1. The Variance will not be contrary to the public interest.

697 Carl Miller yes the house is very conventional and fits right in, Joe Taggart yes, Alex
698 Buchanan yes, Jamie Ramsay yes, Doug Kirkwood yes

699 True: 5, Not True: 0

700
701 2. The Variance is consistent with the spirit and intent of the Ordinance.

702 Jamie Ramsay yes, Joe Taggart yes it is all set with safety, Alex Buchanan yes, Carl
703 Miller yes, Doug Kirkwood yes

704 True: 5, Not True: 0

705
706 3. Substantial justice is done.

707 Jamie Ramsay yes, Joe Taggart yes reasonable use; Carl Miller yes, Alex Buchanan yes,
708 Doug Kirkwood yes

709 True: 5, Not True: 0

710
711 4. The values of surrounding properties will not be diminished.

712 Carl Miller yes, Joe Taggart yes, Jamie Ramsay yes it would be looked at in another light
713 if it were a prevalent feature but it is not, Alex Buchanan yes, Doug Kirkwood yes

714 True: 5, Not True: 0

715
716 5. Literal enforcement of the provisions of the Ordinance would result in an
717 unnecessary hardship.

718 (Apply tests under A or B below)

719
720 A. For purposes of this subparagraph, “unnecessary hardship” means that, owing
721 to special conditions of the property that distinguish it from other properties in the area:

722
723 (1) No fair and substantial relationship exists between the general public
724 purposes of the Ordinance provision and the specific application of that provision to the
725 property; and

726
727 (2) The proposed use is a reasonable one.

728 Alex Buchanan yes it is a permissible use, the lot configuration makes it a proper use,
729 Carl Miller yes, Joe Taggart yes, Jamie Ramsey yes but the zoning interpretation was not
730 incorrect, Doug Kirkwood yes

731 True: 5, Not True: 0

732
733 B. If the criteria in subparagraph A are not established, an unnecessary hardship
734 will be deemed to exist if, and only if, owing to special conditions of the property that

distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

True: ____, Not True: ____

The application passed all the tests therefore the Variance is granted.

Case 1460:

Case 1461:

Alex Buchanan requested that deliberations be done on Case 1461 first. Jamie Ramsay seconded. All were in favor.

Jamie Ramsay moved no regional impact. Carl Miller seconded. All were in favor.

Case 1461:

Carl Miller feels this was issued solely for the house at that time. Alex Buchanan indicated it was clearly granted for residential purposes. Doug Kirkwood – the application for the 1984 Variance wording states the lot does not have proper frontage on a publicly approved road. That is a good indication that the wording was taken right out of the ordinance. Alex Buchanan -the application in 1984 was to build a single family home. Doug Kirkwood said wireless facilities were not in use in 1984. By today's standard to apply to when the original Variance was granted he would have a problem.

II. Conclusions [RSA 674:33, I (b)]:

1. The Variance will not be contrary to the public interest.

Joe Taggart yes public safety is considered for additional communication and emergency response, Jamie Ramsay yes, Carl Miller yes if this property is useless it is consistent with the ordinance, the frontage would have to be waived or the parcel is useless, Alex Buchanan yes, Doug Kirkwood yes

True: 5 Not True: 0

2. The Variance is consistent with the spirit and intent of the Ordinance.

Jamie Ramsay yes the spirit is public safety and welfare, Joe Taggart yes, Carl Miller yes, Alex Buchanan yes – the waiving of frontage requirement was through a taking by the State; Doug Kirkwood yes

True: 5, Not True: 0

3. Substantial justice is done.

Carl Miller yes the property needs to be able to be used; Alex Buchanan yes, there is a current permitted use, Doug Kirkwood yes, this is a new use that was not in existence in 1984, Joe Taggart yes the land was landlocked and there was a taking by the State and if

that never happened we would not be here because there would be frontage; Jamie Ramsay yes

True: 5, Not True: 0

4. The values of surrounding properties will not be diminished.

Joe Taggart yes he may not agree with it, but he must take the evidence presented, Jamie Ramsay no he is not convinced the values will not be diminished, Carl Miller yes he listened to the evidence presented, Alex Buchanan yes, Doug Kirkwood yes expert opinion must be respected as presented

True:4, Not True: 1

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

(Apply tests under A or B below)

A. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

(1) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and

(2) The proposed use is a reasonable one.

Alex Buchanan yes by definition it is a permissible use and the land is already being used residential, Carl Miller yes this lot has a unique history, Joe Taggart yes, Jamie Ramsay yes, Doug Kirkwood yes

True: 5. Not True: 0

B. If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

True: ____, Not True: ____

The Variance has passed all the tests therefore the Variance is granted.

Case 1460

Alex Buchanan moved to consider the Administrative Appeal withdrawn based on the passage of the Variance under 1461. Jamie Ramsay seconded. All were in favor.

Alex Buchanan moved to adjourn. Jamie Ramsay seconded. All were in favor.

The meeting was adjourned at 12:10 a.m.

826 Respectfully submitted,
827
828 Darlene J. Bouffard
829 Recording Secretary
830